



BOARD OF PAROLE HEARINGS

1515 "K" Street, Sixth Floor
Sacramento, CA 95814

ADMINISTRATIVE DIRECTIVE (AD) NO. 08/01

SUBJECT: REGULATORY SECTIONS IMPACTED BY PROPOSITION 9 (MARSY'S LAW)

The November 2008 passage of Proposition 9, also known as Marsy's law, resulted in the need for changes to certain Board of Parole Hearings regulations. All regulatory changes are subject to a rulemaking process that involves the Office of Administrative Law under requirements that are set forth in statute. This process can take several months for regulatory changes that do not meet the statutory definition of an emergency.

The Board of Parole Hearings has identified regulations that it will amend to ensure consistency with the new law. During this interim period, while the regulations go through the rulemaking process, the following regulations are to be applied in a manner consistent with Proposition 9, as set forth below. New regulations will also be promulgated through the rulemaking process in the near future to facilitate the Board's compliance with Proposition 9. All regulatory changes, amendment, repeal or addition of new sections, will be duly submitted to the Office of Administrative Law as required.

Regulatory sections impacted by Marsy's Law upon implementation:

Title 15 section 2029: Marsy's law amended portions of Penal Code section 3043.

1. The notice period for victims is 90 days (formerly 30);
2. The definition of "victim" entitled to notice of a hearing upon request has been expanded to include the "victim of any crime committed by the prisoner, or the next of kin of the victim if the victim has died, to include the commitment crimes for which the prisoner has been paroled, and any other felony crimes or crimes against the person for which the prisoner has been convicted";
3. An additional notice provision has been added, requiring any person entitled to attend the hearing, other than to victim, to inform the Board of his or her intention to attend the hearing and the name and identifying information of any other person entitled to attend the hearing who will accompany him or her;
4. No later than 14 days before the hearing, the board shall notify those entitled to attend the hearing confirming the date, time and place;

5. The victim, next of kin, members of the victim's family and two designated representatives have the right to appear, personally or by counsel, at the hearing and to express his or her views about the prisoner and the case, including but not limited to the commitment crimes, determinate term commitment crimes for which the prisoner has been paroled, and any other felony crimes or crimes against the person for which the prisoner has been convicted, the effect of the enumerated crimes on the victim and the family of the victim, the person responsible for these enumerated crimes and the prisoner's suitability for parole. The board shall consider the entire and uninterrupted statements of the victim, victim's next of kin, immediate family members of the victim and designated representatives of victim or next of kin, if applicable;

6. The victim's representative shall be designated in writing for a particular hearing, prior to the hearing, by the victim or next of kin if the victim is deceased. The representative may address any subject upon which the victim or next of kin has a right to be heard including any recommendation regarding the granting of parole;

7. The board shall permit a representative designated by the victim or the victim's next of kin to attend a particular hearing, and submit a statement even though the victim, next of kin or a member of the victim's immediate family has submitted a statement;

8. When two or more immediate family members wish to attend, the Board shall allow their attendance to include the following: spouse, children, parents, siblings, grandchildren and grandparents.

Title 15 section 2253: Marsy's law eliminated the option to deny parole for a period less than 3 years and added a clear and convincing standard to deny parole for less than 15 or 10 years.

1. There is no longer a distinction between inmates convicted of murder and those convicted of other life crimes when a denial period is being set; the new denial period for all life prisoners found unsuitable for parole is either 15, 10, 7, 5, or 3 years;

2. Stipulations to unsuitability cannot be accepted for any time period other than 15, 10, 7, 5, or 3 years as there is no discretion to set a denial period for any term other than those enumerated;

3. The victim witnesses who may give a statement under this section include those identified above in the comments regarding section 2029, above;

4. The waiver provision remains generally intact; however, as the Penal Code has been amended to eliminate the distinction between murders and nonmurderers, the time period for all waivers, regardless of life crime, is 1-5 years.

Title 15 section 2254: Victims, as well as inmates, may request a record of the hearing

Title 15 section 2255: Victims, as well as inmates, may request a written statement of the decision

Title 15 section 2268: Inmates who are found unsuitable for parole at the initial hearing are to be set for the next hearing in either 15, 10, 7, 5, or 3 years. There is no discretion to set a denial period for any term other than those enumerated.

Title 15 section 2270: Inmates who are found unsuitable for parole at subsequent parole hearings are to be set for the next hearing in either 15, 10, 7, 5, or 3 years. There is no discretion to set a denial period for any term other than those enumerated.

Title 15 section 2470: This section will be amended to comport with the new denial periods. If a grant of parole is rescinded after a rescission hearing, the next parole suitability hearing is to be scheduled in 3, 5, 7, 10, or 15 years, commensurate with Penal Code section 3041.5(b)(3).

Questions concerning this directive may be addressed to Anna Awiszus, Assistant General Counsel, at (916) 323-1643.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Hoshino', with a long horizontal flourish extending to the right.

MARTIN HOSHINO
Executive Officer